Supreme Court, U.S.
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No. 09-534

In The

Supreme Court of the United States

IRVIN HANNIS CATLETT, JR.
Petitioner,

v.

UNITED STATES
Respondent.

Petition for Writ of Certiorari
To The
United States Court of Appeals
for
The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Irvin Hannis Catlett, Jr.
PO Box 128 Kensington, MD 20895
240-499-6797

QUESTIONS PRESENTED

1. Does the self-incrimination clause of the Fifth Amendment of the United States Constitution bar the Internal Revenue Service from enforcing summons issued under 26 U.S.C. Section 7602 When enforcement thereof may tend to incriminate petitioner?

PARTIES

Comes now the Petitioner, Irvin Hannis Catlett Jr., in Proper person and seeks review of the Judgments from the United States Court of Appeals for the Fourth Circuit 08-2274 and the United States District of Maryland PJM-08-438.

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CITATIONS FROM OPINION BELOW

The Circuit Court cited the following citations in support of its judgment.

1. UNITED STATES v. POWELL 379 U.S. 48, 57-58 (1964)

2. ALPINE V. UNITED STATES, 809 F.2d 236,238 (4th CIR. 1987)

STATEMENT ON THE GROUNDS INVOKING THE JURISDICTION OF THIS COURT

Judgment in this case was entered by the United States Court of Appeals for the Fourth Circuit on June 2nd 2009. Petitioners, Petition for Rehearing and Rehearing En Banc was denied as untimely on July 21, 2009. This Petition for Writ of Certiorari is filed within

ninety day of the June 2nd 2009 denial. The Court's jurisdiction is invoked under Title 28 USC 1254.

CONSTITUTIONAL PROVISIONS

The applicable provisions of the Constitution of the United States is Amendment Five.

AMMENDMENT 5

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a Grand Jury, presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, in the Militia, when in actual service in time of War or public danger; nor shall nay person be subject for the safe offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty , or property, without due process of the law; nor shall private property be taken for public use without just compensation."

STATEMENT OF THE CASE

On March 13, 2008, in the United States District Court for the District of Maryland, Petitioner timely filed nine petitions to quash IRS summons served on Petitioner pursuant to 26 U. S. C., Section 7602. The Court ordered the United States to answer the petitions within 30 days or April 12, 2008. On May 1, 2008 over the objection of the petitioner the United States filed and was granted a Motion for Extension of Time.

Subsequently the United States filed a response. On September 24, 2008 the District Court denied petitioner's motions.

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On November 7, 2008 Petitioner filed an appeal to the U.S, Court of Appeals for the Fourth Circuit. That appeal was denied on June 2, 2009. Petitioner filed petitions for rehearing and rehearing en banc by mail on the forty-fifth day. Those petitions were denied as untimely in accordance with Local Rule 40(c). Petitioner than filed a motion for reconsideration and that motion was pocket vetoed.

Petitioner now seeks review of the June 2nd, 2009 Judgment and the July 21, 2009 Order of the United States Court of Appeals for the Fourth Circuit, that affirmed the judgment of the United States District Court for the District of Maryland.

ARGUMENT FOR THE ALLOWENCE OF THE WRIT

In affirming the decision of the District Court, the Circuit Court failed to address petitioners Fifth amendment claims citing only *Powell and Alphin.* Neither case addressed the petitioner's privilege to refuse production of documents that might link to criminal activity.

A factual matter relevant to the fact that the governments summons pursuant to section 7602 were not served on petitioner for custodial purpose, but served on the petitioner for the purpose of circumventing the petitioners Fifth Amendment privilege.

This case unmasks the investigative techniques employed by the Internal Revenue Service. Its principle players are the investigation division and the examination division.

Although both divisions are charged with enforcing the nation's tax laws, the criminal investigation division duties are only criminal in nature. There is no question that the summons served on the petitioner was a fishing expedition. Prior to asking incriminating questions, the administrative warning read by the agents of the criminal division of the Internal Revenue Service states that the special agent cannot compel taxpayer to answer any question, if such an answer or information might tend to incriminate taxpayer in anyway.

It is established that a taxpayer under investigation has no right to intervene in an enforcement action of a summons for business records. Intervention may be allowed, however, when the circumstances are appropriate, such as where there is a significant protectable interest. *Donaldson v. United States*, 400 U.S. 517, 530-31, 91 S. Ct. 534-43, 27L.Ed.2d 580 (1971). Examples of appropriate intervention includes cases where the taxpayer asserts that the material is sought for the improper purpose of obtaining evidence for use in a criminal prosecution. Id. At 530, 91 S. Ct. at 542, citing *Reisman v.Caplin,* 375 U.S. 440,449, 84 S. Ct. 508, 513-14 11 L. Ed 2d 459 (1964).

This case involves the Fifth Amendment question of exceptional importance and the Circuit Court's opinion conflicts with the Eleven Circuit's decision in *U.S. v Argomaniz.* 925 F. 2d 1349 (11TH Cir. 1991) and the *United States v. Sharp* 920 F. 2d 1167 (4th Cir. 1990)

The central standard for the application (of the Fifth Amendment privilege against self-incrimination is) whether the claimant is confronted by substantial and "real" and not merely trifling or imaginary, hazards of incrimination. " *Marchetti v. United States*, 390 U.S. 39, 53(1967). Given the fact that summons served on petitioner were criminal in nature and raised fears that were substantial and not merely imaginary.

In citing Marchetti, the 11th Circuit observed in *U.S. v Argomaniz*, 925 F. 2d 1349, 1353 (11th Cir.1991):

The 11th Circuit noted also in Argomaniz., that " there can exist a legitimate fear of criminal prosecution while the IRS investigation remains in the civil state, before formal transfer to the criminal division". Argomaniz at 1353, citing United States v. Sharp, 920 F.2d 1167 (4th cir. 1990)

In establishing the connection between the nature of the inquiry with Sharp's apprehension of prosecution this circuit noted:

Here, the incriminating nature of the information sought from Sharp was evidence from the very question asked under the circumstance of them asking.

With the incriminating nature of the information facially evident the reasonableness of Sharp's apprehension of prosecution should have been assumed unless there were reasons to question the government's legal ability to prosecute, Sharp at 1171.

CONCLUSION

Quoting Judge Kennedy's dissent in Braswell,

[T]he law is not its own fiction. Yet, in the matter before us the Court employs the fiction that personal incrimination of the employee is neither sought by the Government nor cognizable by the law. That is a regrettable holding, for the conclusion is factually unsound, unnecessary for legitimate regulation, and a violation of the Self-incrimination Clause of the Fifth Amendment of the Constitution. For these reasons I dissent. (487 U.S. 99,131)

During the past decade there has been an erosion of the U.S. Constitution. It is now time to renew the enforcement of that document that has served our country so well for over two hundred years and to renew the amendments (in this case the Fifth), to their original luster. For the forgoing reasons, this Court should revisit and remand this matter and order those Court to quash all summonses.

Respectfully Submitted

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No.

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Petitioner,

v.

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APPENDIX

Irvin Hannis Catlett, Jr.
PO Box 128
Kensington, MD 20895
240-499-6797

IRVIN HANNIS CATLETT, JR

v.

UNITED STATES OF AMERICA

*IN THE
*UNITED STATES DISTRICT COURT
*FOR THE
*DISTRICT OF MARYLAND

*Civil Action No. PJM-08-438

*Civil Action No. PJM-08-530

ORDER

These actions concern Petitions to Quash Internal Revenue Service Summons filed by Irvin H. Catlett, Jr., a resident of Potomac, Maryland, on February 19 and February 26, 2008. As Petitioner has paid the miscellaneous filing fee and it appears that his action is timely, Respondent shall be required to file an answer.

Accordingly, it is this 13th day of March, 2008 by the United States District Court for the District of Maryland, hereby ORDERED that:

1. The above-captioned cases ARE CONSOLIDATED for all purposes with all subsequent filings ENTERED in the lead case PJM-08-438 only;

2. Respondent SHALL ANSWER the Petitions within THIRTY (30) DAYS from the entry date of this Order; and
3. The Clerk SHALL MAIL a copy of this Order to Petitioner and SHALL ALSO MAIL a copy of this Order to Petitioner in both cases to the Office of the United States Attorney for the District of Maryland Assistant United States Attorney Allen Loucks, 36 S. Charles Street, 4th Floor, Baltimore, Maryland 21201.

/s/ Peter J. Messitte
United States District Judge

IRVIN HANNIS CATLETT, JR

v.

UNITED STATES OF AMERICA

APP 2

*IN THE
*UNITED STATES DISTRICT COURT
*FOR THE
*DISTRICT OF MARYLAND

*Civil Action No. PJM-08-438

ORDER

Upon consideration of Plaintiff's ten Petitions to Quash IRS Summons [Paper Nos. 1 & 3-11] and Defendant's Motion to Enforce IRS Summons [Paper No. 14], it is, this 23rd day of September, 2008,

ORDERED:

1) Each of Plaintiff's Petitions to Quash IRS Summons is DENIED:
2) Defendant's Motion to Enforce IRS Summons is GRANTED;
3) The Clerk of Court shall CLOSE this case.

/s/ Peter J. Messitte
United States District Judge

IRVIN HANNIS
CATLETT, JR

*IN THE
*UNITED STATES
COURT OF
APPEALS
*FOR THE
*FOURTH
CIRCUIT

v.

*No. 08-2274

UNITED STATES OF AMERICA

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Peter J. Messitte, Senior District Judge . (8:08-cv-00438-PJM)

Submitted: May, 28, 2009 Denied: June 2, 2009

Before WILKINSON, KING, and GREGORY, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Unpublished opinions are not binding in this circuit.

PER CURIAM:

Irvin H. Catlett, Jr., appeals the District Court's order denying ten petitions to Quash summonses issued by the Internal Revenue Service. Our review of the record discloses that the Government met its burden of proof under 28 U.S.C. section 7602 to support the enforcement of the summonses.

See- *United States v. Powell*, 379 U.S. 48, 57-58 (1964; *Alphin v. United States*, 809 F. 236, 238,(4th Cir.) (1987).

Accordingly, we affirm. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

IRVIN HANNIS CATLETT, JR.

v.

UNITED STATES OF AMERICA

* IN THE
*UNITED STATES
COURT OF
APPEALS
*FOR THE
*FOURTH
CIRCUIT

*Civil Action
No. 08-2274
PJM 8:08-cv-00438

ORDER

The Court strictly enforces limits for filing petitions for rehearing and petitions for rehearing en banc in accordance with Local Rule 40 (c). The petition in this case is denied as untimely.

For the Court- By Direction
/s/ Patricia S. Connor, Clerk